

LSA

Legal Services Agency
Scotland's National Law Centre

*Short Assured Tenancies:
Private Rented Sector*

Published by Legal Services Agency Ltd

This publication is funded by the Scottish Executive

Introduction

This leaflet is for tenants and landlords of houses in the private rented sector. It gives general information about the rights and responsibilities of tenants and landlords under Short Assured Tenancies. Short Assured Tenancies are the most common kind of tenancy in the private rented sector.

The law is complex and tenants and landlords should get expert advice, particularly before signing any legal documents, including tenancy agreements.

Tenants and landlords can get independent advice from:

- solicitors
- law centres
- housing aid centres
- local authorities
- Citizens Advice Bureaux.

The law covering Short Assured Tenancies is the Housing (Scotland) Act 1988 as amended by the Housing (Scotland) Act 2001 and Homelessness etc (Scotland) Act 2003.

What is a short assured tenancy?

A Short Assured Tenancy allows tenants the right to stay in a house (security of tenure) for an agreed period. It also allows landlords the right to evict a tenant easily at the end of this period.

It is different from an Assured Tenancy because it is time limited.

The main conditions of a Short Assured Tenancy are:

- The landlord has told the prospective tenant about the length and nature of the tenancy before the start of the tenancy. This must be done using a special form.
- The tenancy is (at least initially) for at least six full months. This must be stated in the Tenancy Agreement.

There are other conditions:

- The property must be rented as a separate dwelling. This means that part or all of the property must be for the sole use of the tenant or joint tenants and family. It is possible to have an assured tenancy in a shared house or a bedsit.
- It must be the tenant's only or main home.
- It must not be a type of tenancy which cannot be an Assured Tenancy (such as a house which goes with a job, a holiday home, house in which the landlord lives or council or housing association house) (otherwise known as a house belonging to a "Registered Social Landlord" or "RSL").

- The lease must initially be for a fixed period of at least six full months (but it can continue after this first period for less than six months, if the tenant and landlord agree).
- The landlord must give a specific formal notice (document) to the prospective tenant before the tenancy starts.
- The written tenancy agreement must state that the tenancy is, initially, for at least six months. The tenancy agreement must be signed.

If any of the last three conditions are not followed correctly then it is not a Short Assured Tenancy. It is likely to be an Assured Tenancy. This is much more difficult for a landlord to end.

Formal notice (document) to set up a short assured tenancy

The landlord must give a formal document to the prospective tenant before the tenancy starts (it is good practice to do this at least a day or two before). This document warns the tenant that it is a Short Assured Tenancy. It is called Form AT5.

After this notice is given, a tenancy agreement should be signed. This will be for a period of six months or more initially but a year is quite common.

If the landlord and tenant agree, the initial period can be extended. There is no minimum length of time. When the tenancy is extended it is called a Continued Short Assured Tenancy.

The tenancy agreement

It is important to check the tenancy agreement carefully. At the very least, it should state the address of the property, the rent and the landlord's name as well as, of course, the duration of the tenancy.

Details to check include:

- Does it accurately describe the property?
- If there sole use of one room/rooms and shared use of others (such as kitchen) is that accurately described?
- If other people are likely to share parts of the property, is there a maximum number?
- If it is a joint tenancy, do all the prospective tenants know their obligations to the landlord and to each other? (For example, if one of the joint tenants leaves before the end of the tenancy they will be liable for their share of rent until the end of the lease, but the landlord may be able to force the remaining tenants to pay this.)
- Tenancy Agreements usually include the standard grounds for recovery of possession/eviction for Assured Tenancies as well as possibly notice that the house may be recovered due to mortgage arrears or in the case of a former family home, that the landlord or his/her spouse may return to live there.

How short assured tenancies benefit landlords

If the Short Assured Tenancy is properly set up and the correct procedures followed, the tenancy will come to an end at the time the landlord and tenant had originally agreed. The landlord can get a court order if necessary to evict the tenant at that time. The only reason needed, is that the agreed period has ended.

The correct procedures for ending a short assured tenancy

There are five legal requirements:

- 1** Proof that the tenancy is a Short Assured Tenancy.
- 2** The Landlord has not agreed a new tenancy with the tenant nor has the original one continued automatically because no one has done anything to end it.
- 3** The landlord has given the tenant a correct "Notice to Quit".
- 4** The landlord has given the tenant a notice to inform them that they want the property back. This notice must be given in good time.
- 5** The tenancy has come to the end of the agreed period.

A tenant can only be forced to move out if the landlord has obtained a court order. It is unlawful for a landlord to remove a tenant without a court order. Note however that if a tenant stays in a former Short Assured Tenancy that has validly been brought to an end and, as a result, the landlord requires to take action for eviction, the tenant may have to pay the landlord damages as well as court expenses.

When notices should be given

The Notice to Quit must be served (given to) on the tenant at least 28 or 40 days before the end of the tenancy. The minimum period of notice depends on the length the tenancy.

The notice should follow a certain form. If it does not, it may not be valid. Mistakes are common. If the Notice to Quit is not valid, the landlord may lose the right to evict at that time.

The second notice (which tells the tenant that the landlord wants the property back) must be given at least two months in advance. The law states that this can be done using “an AT6” form or by letter.

If properly served, these notices mean that a tenant cannot dispute (disagree with) the eviction.

Refusing to leave

The tenant does not have to leave after getting the notices. But if they stay in the property without any legal right, (i.e. after tenancy has validly been brought to an end), the landlord could claim damages (money). Tenants should get advice immediately. Getting involved in any court action could be very expensive.

Leaving at the end of the tenancy

If the tenant wants to leave at the end of the tenancy, they should tell the landlord in writing. The end of the tenancy is the end of the initial period (six months or more). Tenants should give more than six weeks' written notice. 40 days is the usual minimum in six-month leases.

For a Continued Short Assured Tenancy, the end of the tenancy could be less than six months. In this case, 28 days written notice may be enough, but if in doubt tenants should give six weeks or more.

Sometimes tenancy agreements specify the amount of notice tenants should give. Tenants should check their tenancy agreement and if in doubt, get advice.

Leaving early

Some landlords are happy for tenants to leave early. But tenants should give plenty of notice and get the landlord's assurance, preferably in writing, that they will not try to keep the deposit or demand compensation. Other landlords are uncooperative. They may say that leaving early is "breach of contract". If this is a possibility, tenants should get advice before leaving.

Information and advice

For further information and advice tenants can contact:

- Solicitors: Legal Aid may be available if necessary
- Law Centres (including Legal Services Agency)
- Shelter Housing Aid Centres
- Housing Aid Centres
- Citizens Advice Bureaux

About Legal Services Agency (LSA)

LSA is one of Scotland's leading law centres. We undertake a wide range of casework in all courts and tribunals, organise seminars and publish leaflets on many topics. See also www.lsa.org.uk for full details of our work and how we can help you.

We specialise in social welfare law including asylum, landlord and tenant disputes, homelessness, criminal injuries compensation, children's rights, mental health, community care, disability discrimination and dementia.

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